

**MINUTES
URBAN COUNTY PLANNING COMMISSION
SUBDIVISION ITEMS**

August 14, 2014

- I. **CALL TO ORDER** - The meeting was called to order at 1:30 p.m. in the Council Chambers, Urban County Government Building, 200 East Main Street, Lexington, Kentucky.

Planning Commission members present - Mike Owens, Chair; Mike Cravens; Karen Mundy; Carolyn Plumlee; Bill Wilson; Will Berkley; Carolyn Richardson; David Drake and Patrick Brewer. Frank Penn and Joseph Smith were absent.

Planning staff members present - Chris King; Bill Sallee; Barbara Rackers; Tom Martin; Cheryl Gallt and Denise Bullock. Other staff members in attendance were: Hillard Newman, Division of Engineering; Casey Kaucher, Division of Traffic Engineering; Tim Queary, Department of Environmental Policy; Captain Greg Lengal and Lieutenant Joshua Thiel, Division of Fire and Emergency Services; Tim Queary, Department of Environmental Policy; and Tracy Jones, Department of Law.

Note: Mr. Drake departed the meeting.

- II. **APPROVAL OF MINUTES** - The Chair reminded the Commission members that the minutes of the July 10, 2014, meeting were previously emailed to the Commission for their review, adding that there was one correction made to the Committee attendance at the July 3rd Subdivision Committee meeting; and if there were no other changes, those minutes were ready to be considered at that time.

Action - A motion was made by Mr. Cravens, seconded by Ms. Mundy and carried 8-0 (Drake, Penn and Smith absent) to approve the minutes of the July 10, 2014, meeting.

Note: Mr. Drake returned to the meeting.

- III. **POSTPONEMENTS OR WITHDRAWALS** - Requests for postponement and withdrawal will be considered at this time.

- a. DP 2014-64: SOUTH BROADWAY PLACE (PHASES IIA & III), LYNN GROVE ADDITION (AMD) (10/5/14)* - located at 107, 116, 118, 201 & 203 Simpson Avenue; 1100-1110 Prospect Avenue; and 99-103 & 109-119 Burley Avenue.
(Council District 3) **(Barrett Partners)**

Note: The purpose of this amendment is to revise the development of South Broadway Place, Lynn Grove Addition Townhouse (R-1T) area and redevelopment of R-4 areas of Lynn Grove Addition.

The Subdivision Committee Recommended: **Postponement**. There were some questions about the storm drainage improvements that might be necessary.

Should this plan be approved, the following requirements should be considered:

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
8. Division of Waste Management's approval of refuse collection locations.
9. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
10. Correct reference in note #20 to "Division of Waste Management."
11. Denote street cross-sections through Export Street and Simpson Avenue.
12. Denote existing easements on face of plan.
13. Clarify lot lines, and add calls & distances at north edge of property.
14. Revise notes to include all relevant notes from approved plan.
15. Denote BOA approval of variance and delete note #17.
16. Denote closure of Simpson Avenue and Prospect Avenue and cite Council ordinance.
17. Denote source of contour data on plan.
18. Denote front building lines on Lots 14-19 & 20-25.
19. Discuss status and timing of proposed pedestrian access across railroad right-of-way.
20. Discuss compliance with note #24 on approved plan.
21. Discuss compliance with note #25 on approved plan.
22. Discuss emergency vehicle access in area adjacent to Burley Avenue.

* - Denotes date by which Commission must either approve or disapprove request.

Representation – Tony Barrett, Barrett Partners, was present representing the applicant, and requested postponement of DP 2014-64: SOUTH BROADWAY PLACE (PHASES IIA & III), LYNN GROVE ADDITION (AMD) to the September 11, 2014, Planning Commission meeting.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request for postponement. There was no response.

Action - A motion was made by Ms. Plumlee, seconded by Mr. Wilson and carried 9-0 (Penn and Smith absent) to postpone DP 2014-64: SOUTH BROADWAY PLACE (PHASES IIA & III), LYNN GROVE ADDITION (AMD) to the September 11, 2014, Planning Commission meeting.

IV. LAND SUBDIVISION ITEMS - The Subdivision Committee met on Thursday, August 7, 2014, at 8:30 a.m. The meeting was attended by Commission members: Will Berkley, Karen Mundy, Joe Smith and Mike Owens. Committee members in attendance were: Hillard Newman, Division of Engineering; and Casey Kaucher, Division of Traffic Engineering. Staff members in attendance were: Bill Sallee, Tom Martin, Dave Jarman, Denice Bullock, Barbara Rackers, Traci Wade, Cheryl Gallit and Kelly Hunter, as well as Tracy Jones, Department of Law, and Greg Lengal and Joshua Thiel, Division of Fire and Emergency Services. The Committee made recommendations on plans as noted.

General Notes

The following automatically apply to all plans listed on this agenda unless a waiver of any specific section is granted by the Planning Commission.

- 1. All preliminary and final subdivision plans are required to conform to the provisions of Article 5 of the Land Subdivision Regulations.*
- 2. All development plans are required to conform to the provisions of Article 21 of the Zoning Ordinance.*

A. CONSENT AGENDA - NO DISCUSSION ITEMS – Following requests for postponement or withdrawal, items requiring no discussion will be considered.

Criteria:

- (1) the Subdivision Committee recommendation is for approval, as listed on this agenda; and
- (2) the Petitioner is in agreement with the Subdivision Committee recommendation and the conditions listed on the agenda; and
- (3) no discussion of the item is desired by the Commission; and
- (4) no person present at this meeting objects to the Commission acting on the matter without discussion; and
- (5) the matter does not involve a waiver of the Land Subdivision Regulations.

Requests can be made to remove items from the Consent Agenda:

- (1) due to prior postponements and withdrawals,
- (2) from the Planning Commission,
- (3) from the audience, and
- (4) from Petitioners and their representatives.

At this time, the Chair requested that the Consent Agenda items be reviewed. Mr. Sallee identified the following items appearing on the Consent Agenda, and oriented the Commission to the location of these items on the regular Meeting Agenda. He noted that the Subdivision Committee had recommended conditional approval of some of these items and the staff recommended approval of the remainder. (A copy of the Consent Agenda is attached as an appendix to these minutes).

1. PLAN 2014-51F: JOHNSON SUBDIVISION, LOT 26 (AMD) (10/5/14)* - located at 455-457 N. Martin Luther King Boulevard. (Council District 1) **(Randy Martin)**

Note: The purpose of this amendment is to subdivide one lot into two lots.

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Addressing Office's approval of street names and addresses.
4. Urban Forester's approval of tree protection area(s) and required street tree information.
5. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
6. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
7. Denote date of plan preparation.
8. Denote addresses on lots.
9. Denote the front yard building line per the Zoning Ordinance.
10. Document existence of separate sewer laterals prior to certification.
11. Increase size of street cross-section (for legibility).
12. Denote that the structure will be a duplex (one unit per lot).
13. Document compliance with building code for separation prior to certification.
14. Addition of storm water easement.

* - Denotes date by which Commission must either approve or disapprove request.

2. PLAN 2014-52F: GRASMERE SUBDIVISION, UNIT 5 (10/5/14)* - located at 916 Bravington Way.
(Council District 9) **(Banks Engineering)**

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s) and required street tree information.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
8. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
9. Identify all adjacent property with dashed lines.
10. Denote proposed and existing easements and building lines.
11. Addition of private utilities on plat.
12. Denote alluvial soils on rear of lot.
13. Denote tree protection areas.
14. Denote steep slopes.
15. Resolve timing of right-of-way closure and rejection from both adjoining properties prior to plan certification.
16. Resolve limits of proposed buildable area.

3. PLAN 2014-57F: KIRKLEVINGTON HILLS APARTMENTS (AMD) (10/28/14)* - located at 3050 Kirklevington Drive.
(Council District 4) **(Vision Engineering)**

Note: The purpose of this amendment is to add easements and to revise the front building setback line.

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s) and required street tree information.
6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
7. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
8. Addition of plan preparation date.
9. Addition of survey monument information per Article 6 requirements.
10. Correct owner's certification.
11. Correct surveyor's certification.
12. Correct Urban County Engineer's certification.
13. Addition of lot frontage for Tates Creek, Kirklevington & Macadam to site statistics.
14. Addition of floodplain notes from DP 2014-27.
15. Addition of all maintenance notes per Article 5-4(g) of the Land Subdivision Regulations.
16. Review by Technical Committee prior to plan certification.

4. PLAN 2006-240F: NEWMARKET, PH I, UNIT 1E (10/28/14)* - located at 1201 Deer Haven Lane (a portion of).
(Council District 12) **(EA Partners)**

Note: The Planning Commission originally approved this plan on November 9, 2006, and reapproved it on November 8, 2007 and January 15, 2009, subject to the conditions listed below.

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and required street tree information.
4. Approval of street addressing by e911 staff.
5. Urban Forester's approval of tree preservation areas.
6. Label Tree Protection Area (TPA) per conditional zoning restrictions.

Section 1 of this plan was recorded on September 9, 2009.

Note: The Planning Commission reapproved this plan on October 13, 2011, subject to the original conditions above, revising the following:

3. Building Inspection's approval of landscaping ~~and required street tree information.~~
5. Urban Forester's approval of tree preservation plan and required street tree information.

* - Denotes date by which Commission must either approve or disapprove request.

The Planning Commission reapproved this plan again on July 11, 2013, subject to the original conditions from the November 9, 2006, meeting, as well as the revised conditions from the October 13, 2011, meeting.

The applicant now requests reapproval of Section 2 on the plan (the unrecorded portion – 2 lots).

The Subdivision Committee Recommended: **Reapproval of Section 2**, subject to the original conditions, and the revised conditions, as previously noted.

5. DP 2014-59: APIARY PROPERTY, LLC (AMD) (10/5/14)* - located at 218 Jefferson Street.
(Council District 1) **(Wheat & Ladenburger)**

Note: This property requires the posting of a sign and an affidavit of such. The purpose of this amendment is to cover two patios.

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
 2. Urban County Traffic Engineer's approval of street cross-sections and access.
 3. Building Inspection's approval of landscaping and landscape buffers.
 4. Addressing Office's approval of street names and addresses.
 5. Urban Forester's approval of tree preservation plan.
 6. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
 7. Division of Waste Management's approval of refuse collection locations.
 8. Denote cross-sections through Miller Street and Jefferson Street.
6. DP 2014-60: DEERFIELD SHOPPING CENTER (OLLEY'S TROLLEY) (AMD) (10/5/14)* - located at 205 Southland Drive.
(Council District 3) **(Vision Engineering)**

Note: The purpose of this amendment is to add a one-story, 4,000 sq. ft. office building.

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
 2. Urban County Traffic Engineer's approval of street cross-sections and access.
 3. Building Inspection's approval of landscaping and landscape buffers.
 4. Addressing Office's approval of street names and addresses.
 5. Urban Forester's approval of tree preservation plan.
 6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
 7. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
 8. Division of Waste Management's approval of refuse collection locations.
 9. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
 10. Certification of final record plat amending the 50' building line prior to plan certification.
7. DP 2014-62: DISTILLERY DISTRICT WEST, UNIT 1 (AMD) (10/5/14)* - located at 1170 Manchester Street.
(Council District 2) **(2020 Land Surveying)**

Note: This property requires the posting of a sign and an affidavit of such. The purpose of this amendment is to remove a note referring to the required LOMR (from FEMA).

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
6. Division of Waste Management's approval of refuse collection locations.
7. Denote developer's information on plan.
8. Addition of conceptual plan inserts.
9. Addition of lot lines from Final Record Plat.
10. Addition of purpose of amendment note.
11. Correct note #5 to include Article 16 reference.
12. Resolve status of private sanitary sewer system.

* - Denotes date by which Commission must either approve or disapprove request.

8. DP 2014-63: LYNN GROVE ADDITION (10/5/14)* - located at 186 Simpson Avenue; 1101-1111 Fern Avenue (odd only); and 1100-1110 Stillwell Avenue (even only). (Council District 3) **(Barrett Partners)**

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
 2. Urban County Traffic Engineer's approval of street cross-sections and access.
 3. Building Inspection's approval of landscaping and landscape buffers.
 4. Addressing Office's approval of street names and addresses.
 5. Urban Forester's approval of tree preservation plan.
 6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
 7. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
 8. Division of Waste Management's approval of refuse collection locations.
 9. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
 10. Move dumpster location to match approved preliminary development plan.
9. DP 2013-5: MANCHESTER DEVELOPMENT (AMD) (11/4/14)* - located at 922, 926 and 930 Manchester Street. (Council District 2) **(Barrett Partners)**

Note: This property requires the posting of a sign and an affidavit of such. The purpose of this amendment is to add 922, 926 and 930 Manchester Street for a new building as part of this Adaptive Reuse Project. The Planning Commission originally approved this plan on January 17, 2013, subject to the conditions listed below:

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Division of Fire, Water Control Office's approval of fire hydrants, fire department connections and fire service features locations.
8. Division of Waste Management's approval of refuse collection.
9. Clarify site statistics, including required and provided parking.
10. Clarify proposed uses, including square footage and parking requirements.

Note: Commission approval has since expired, and the applicant has requested a reapproval of this plan.

The Staff Recommends: **Reapproval**, subject to the original conditions.

In conclusion, Mr. Sallee directed the Commission's attention to DP 2014-59; DP 2014-62 and DP 2013-5, and said that these properties are required to have a sign posted on each and an affidavit submitted into the record about those postings. The staff had received an affidavit for each of these properties, and the documentation appeared to be in order.

Mr. Sallee then said that the items identified on the Consent Agenda could be considered for conditional approval at this time by the Commission, unless there was a request for an item to be removed from consideration by a member of the Commission, or the audience, in order to permit further discussion. There was no response.

Consent Agenda Discussion – The Chair asked if anyone in the audience or on the Commission desired further discussion of any of the items listed on the Consent Agenda.

Action - A motion was made by Mr. Brewer, seconded by Ms. Plumlee and carried 9-0 (Penn and Smith absent) to approve the items listed on the Consent Agenda, as recommended by the staff.

- B. PERFORMANCE BONDS AND LETTERS OF CREDIT** – Any bonds or letters of credit requiring Commission action will be considered at this time. The Division of Engineering will report at the meeting.

Action - A motion was made by Mr. Cravens, seconded by Ms. Mundy, and carried 9-0 (Penn and Smith absent) to approve the release and call of bonds as detailed in the memorandum dated August 14, 2014, from Barry Brock, Division of Engineering.

- C. DISCUSSION ITEMS** – Following requests for postponement, withdrawal and no discussion items, the remaining items will be considered.

The procedure for these hearings is as follows:

- Staff Report(s), including subcommittee reports (30 minute maximum)
- Petitioner's report(s) (30 minute maximum)
- Citizen Comments

* - Denotes date by which Commission must either approve or disapprove request.

- (a) proponents (10 minute maximum OR 3 minutes each)
- (b) objectors (30 minute maximum OR 3 minutes each)
- Rebuttal & Closing Statements
 - (a) petitioner's comments (5 minute maximum)
 - (b) citizen objectors (5 minute maximum)
 - (c) staff comments (5 minute maximum)
- Commission discusses and/or votes on the plan.

Note: Requests for additional time, stating the basis for the request, must be submitted to the staff no later than two days prior to the meeting. The Chair will announce his/her decision at the outset of the hearing.

1. **FINAL SUBDIVISION PLANS**

- a. PLAN 2014-49F: PINEHURST SUBDIVISION, LOT 33 (AMD) (10/5/14)* - located at 153 Beverly Avenue.
(Council District 6) **(Foster-Roland)**

Note: The purpose of this amendment is to subdivide one lot into two lots.

The Subdivision Committee Recommended: **Postponement.** There were some questions regarding the sanitary sewer connection and the adequacy of the existing 50' access easement.

Should this plan be approved, the following requirements should be considered:

1. Urban County Engineer's acceptance of drainage and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s) and required street tree information.
6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
7. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
8. Addition of tree protection information.
9. Addition of the purpose of amendment note.
10. Increase font size for notes and certifications.
11. Addition of name and address of property owner and developer.
12. Addition of adjacent property information.
13. Identify adjacent property lines with dashed lines.
14. Addition of private access easement maintenance note.
15. Correct length of street (lot frontage) in site statistics.
16. Identify street trees required for each lot.
17. Resolve proposed widening on all street frontages or dedication of right-of-way.
18. Discuss access to property and adequacy of existing easement to provide public service.
19. Discuss sanitary sewer connection locations.

Staff Presentation – Mr. Martin directed the Commission's attention to the amended final record plat for Pinehurst Subdivision, Lot 33, located at 153 Beverly Avenue. He oriented the Commission to the location of the subject property on the plan rendering, and briefly explained that the property is located off Old Paris Pike, along Beverly Avenue, and is adjacent to I-64 and I-75 right-of-way. He said that this property was originally platted in 1980, and the applicant is proposing to subdivide Lot 33 into two lots (Lot 33-A and Lot 33-B). He noted that there is a 50' access easement next to 223 Beverly Avenue that was created to serve the nearby properties north of the interstate.

Mr. Martin said that the proposed plan was reviewed by the Technical Committee and Staff, as well as the Subdivision Committee. Due to the questions regarding the sanitary sewer connection and the adequacy of the existing 50' access easement, this item was recommended for postponement. He then said that, should the Commission approve the applicant's request, it would be subject to the list of conditions outlined on today's agenda. He briefly explained that conditions #1 through #7 involve standard sign-off conditions from the different utilities and divisions of the LFUCG; and the remaining conditions, with the exception of two discussion items, are "cleanup" items.

Mr. Martin said that the subject property has frontage on Beverly Avenue, as well as legal frontage along the interstate. He explained that there is a small "dog leg" between the interstate and 231 Beverly Avenue that leads to the rear of subject property (Lot 33-B). He said that there is a 50' access easement between 219 and 223 Beverley Avenue, and the applicant is proposing to utilize this access easement as the primary entrance to Lot 33-B. The staff was concerned as to whether or not there would be sufficient room with the width of this easement in order to provide the necessary public services.

Mr. Martin explained that several years ago there was a sewer project in this area; and under the Land Subdivision Regulations, before a lot can be created or recorded, a sewer line connection must be provided to that proposed lot.

* - Denotes date by which Commission must either approve or disapprove request.

He said that there are four existing manholes in the general area that could be used to provide service to Lot 33-B. However, the issue is which manhole would provide the best sewer service that lot. He said that, since the Subdivision Committee meeting, there has been a flurry of activity concerning this proposal, to include the applicant hiring ECSI to determine the availability of the sanitary sewer service. Those findings were submitted to the Division of Engineering and were previously distributed to the Commission for their review. Mr. Martin said that one of the staff's issues with Lot 33-B is the 1' elevation change from Lot 33-B to the two manholes located near 223, 231 and 237 Beverly Avenue. Since that location would result in a limited amount of buildable area on Lot 33-B, those manholes do not appear to be a viable option. He said that the manholes located between 153 and 219 Beverly Avenue seem to provide a better option for Lot 33-B to tie into the public sewer system.

Mr. Martin directed the Commission's attention to the overhead projector, and said that the applicant had met with the Division of Engineering staff on site, to determine what needs to be done to provide an adequate sewer connection to Lot 33-B. In looking at the revised submission, the applicant is now proposing to relocate the lot line and create an additional "dog leg" at the rear of 219 Beverly Avenue. In doing so, it would shorten the distance and the amount of public sewer line needed for Lot 33-B. He said that if an easement were provided along the subject property next to 219 Beverly Avenue, that line would need to make a 90 degree angle at the corner of 219 Beverly Avenue; which would require another manhole to be installed. This would, in turn, create an odd configuration; and the Land Subdivision Regulations do discourage odd geometry. However, this is not an absolute, and there are some exceptions made to the Land Subdivision Regulations.

Mr. Martin directed the Commission's attention to the aerial photograph, and described the location of the green area, access easement and the existing barn. He said that the Land Subdivision Regulations require a tree protection area; and, in looking at the aerial photograph, there is a significant tree line that needs to be considered and protected. He then said that there is an existing barn on the subject site near the rear of 219 Beverly Avenue, and this is the area where the manhole would need to be installed to provide service to Lot 33-B. He explained that the sanitary sewer easement must be at least 15' wide. This creates a potential conflict, which is what led the staff to make their recommendation of postponement. He said that the staff understands a sewer connection can be made to Lot 33-B, but more time is needed to determine the appropriate way to service this lot. This lot can not be certified, recorded or legally transferred until the sewer connection is dealt with.

Planning Commission Questions – Mr. Berkley asked, instead of having the easement on Lot 33-A, if it is possible to use the existing 50' access easement to make that sewer connection. Mr. Martin said that the best possible solution would be for the applicant to have an easement along the property boundary in the area of the property near the barn. Mr. Sallee said that the 50' access easement is less than half on the subject property; so if the applicant wanted to expand the easement to also make their part of it a sanitary sewer easement, they would have to negotiate that proposal with the surrounding property owners. Mr. Berkley indicated that he was aware of that, and said that the applicant would have to negotiate with the neighboring owner either way. Mr. Sallee said that the applicant already has some control if they use their Beverly Avenue frontage. Mr. Berkley asked if Lot 33-A is part of this proposal. Mr. Martin replied that Lot 33-A is the parent tract. Mr. Berkley then asked if the easements would be located on the parent tract. Mr. Martin replied affirmatively, and explained that there is enough drop in the topography to make the sewer connections and meet the Land Subdivision Regulations. He said that with the conflict of the tree line and the existing barn, the easement may necessitate the removal of the barn to help protect the tree line between 153 and 219 Beverly Avenue. Mr. Martin said that the challenges facing this request are what led the staff to recommend postponement of this plat.

Mr. Brewer asked, even with the recent flurry of activity, if the issues have not been addressed. Mr. Martin replied that the staff believes more time is needed to fully address these issues.

Ms. Mundy asked if it is possible to make the sewer connection, from the other side of Beverly Avenue, using a grinder pump. Mr. Martin said that it is possible, but it would require a specific action by the Planning Commission for the applicant **to do so**. He added that the applicant has not requested any sort of relief or waivers regarding for this issue.

Representation – Myke Robbins, Foster-Roland, was present on behalf of the applicant, along with Alicia Ritter, realtor. Mr. Robbins said that they had met the Division of Engineering on the site to determine what would be the best solution. He explained that, in order for a sewer line connection to be successful, the bottom part of the sewer line must be lower than the flow line to allow it to gravity feed. He indicated that the building site is at the same grade as the two manholes on Beverly Avenue, which is not a viable solution. He noted that there are manholes on the other side of Beverly Avenue, but there is also a depression on the parent tract, which may be indicative of a sinkhole. The sewer line can not be run through a sinkhole because it may collapse and that would be counterproductive. He said that the only manhole remaining is on the subject site along the property boundary near 219 Beverly Avenue. He then said that there is already a 15' easement running from Beverly Avenue back along the 161 Beverly Avenue property boundary to the edge of the 219 Beverly Avenue property line. He noted that there are trees along this property line, but nothing that would prevent an easement to be made; plus, there is a 25' difference in elevation in this area, which would only require a 1 percent grade in fall to make the sewer work properly, which is how 219 Beverly Avenue was provided service.

Mr. Robbins said that, at the Subdivision Committee meeting, the Division of Fire and Emergency Services had some concern with the larger trucks being able to have a turning radius provided on the access easement. Currently there is a house located at 219 Beverley Avenue; and should there be a house built on Lot 33-B, Fire and Emergency services is capable of using this easement to provide emergency service.

Mr. Robbins said that, as far as the barn is concerned, it is not an issue with the buyer. He then said that either part or the entire barn can be removed in order to provide a sewer connection. He added that they have consulted with Fred Eastridge of ESCI, and it has been determined that a connection can be made. He said that he wants to assure his client that, if she goes through the expense of building the sewer, she will be allowed to sell the parcel. He asked if a note could be added to the final record plat stating: "No buildings permits will be issued until or unless the Lexington-Fayette Urban County Government approves the construction of the sewer." Mr. Martin said that that request would be an aspect of a waiver request, since public sewers are necessary for the creation of a lot. If the sewer connection is made, then the Urban County Engineer and the Division of Planning will sign the plat, at which time it can be recorded. He then said that the applicant would need to request a waiver to the sewer line connection; and should the Planning Commission grant their request then a note could be placed on the plat as a condition of that waiver request.

Mr. Robbins asked if the Planning Commission can grant the waiver at today's hearing. Mr. Martin explained that the Commission could grant the waiver request; but since there has been no official request from the applicant, the staff has not prepared a staff report or any conditions.

Planning Commission Questions – Mr. Wilson said that it seems that the applicant and staff are on the right path to resolve these issues, and asked what challenges would the applicant face if this item was to be postponed. Mr. Robbins said that the challenges would be placed on the seller and the buyer of the property. He explained that the buyers want to move forward with their project before the season changes; and postponing this item one month would place a hardship on this project, as far as pouring concrete and constructing the house. He said that the buyers want to work on the interior portion of the house in the winter months, so timing is an important factor in this project. He then said that the applicant is concerned that the buyers will walk away from this deal.

The Chair said that, even though there was a recent flurry of activity, the issues associated with the request need to be resolved a little more, and asked if they would be agreeable to a 2-week postponement. Mr. Robbins explained that he was out of town during the Technical Committee Review and was not aware of the staff's concerns until the Subdivision Committee meeting, but that they would be agreeable to a 2-week postponement.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request. There was no response.

Staff Comment – Mr. Sallee suggested that this item be continued, not postponed, to the August 28th meeting.

Action - A motion was made by Mr. Brewer, seconded by Ms. Richardson and carried 9-0 (Penn and Smith absent) to continue PLAN 2014-49F: PINEHURST SUBDIVISION, LOT 33 (AMD) to the August 28, 2014, Planning Commission meeting.

- b. PLAN 2014-50F: DISTILLERY, LLC PROPERTIES (AMD) (10/5/14)* - located at 1170 Manchester Street.
(Council District 2) **(2020 Land Surveying)**

Note: The purpose of this amendment is to subdivide one lot into two lots.

The Subdivision Committee Recommended: Approval, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s).
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
8. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
9. Denote: This property shall be developed in accordance with the approved final development plan.
10. Denote property owner and developer's information on plan.
11. Denote dashed line for 1178 address (unless it's part of this plat).
12. Denote 30' utility easement from previous plan.
13. Discuss status of private sewer system and possible need for a waiver.

Staff Presentation – Mr. Martin directed the Commission's attention to the amended final record plat for the Distillery, LLC Properties, located at 1170 Manchester Street. He oriented the Commission to the location of the subject

* - Denotes date by which Commission must either approve or disapprove request.

property on the plan rendering, and briefly explained that the property is situated along Manchester Street, across from Thompson Road. He noted that the site is located in the center of the 100-year floodplain that extends from Town Branch Creek, located at the rear of the site, over toward Thompson Road. Mr. Martin said that the Planning Commission had recently approved the subdivision of this lot, as well as just approving the corollary development plan (DP 2014-62: DISTILLERY DISTRICT WEST, UNIT 1 (AMD)) for this property listed, on the Consent Agenda. He noted that the purpose of DP 2014-62 is to remove the note referring to the required LOMR on this property. He said that the purpose of this amendment is to subdivide one lot into two lots, which would allow the property to be transferred.

Mr. Martin said that the Subdivision Committee had recommended approval of the applicant's request, subject to the conditions listed on today's agenda. He briefly explained that conditions #1 through #8 involve standard sign-off conditions from the different utilities and divisions of the LFUCG; and the remaining conditions, with the exception of one discussion item, are "cleanup" items. He said that the discussion item concerns the private sewer system and the possibility that a waiver needs to be granted. He directed the Commission's attention to the waiver report for PLAN 2013-78F: DISTILLERY DISTRICT, (AMD), and said that that property (1200 Manchester Street) has the same issues concerning the sanitary sewer, the floodplain and the elevation of the property. He then said that the floodplain has created a situation such that a pump station is required for the properties along Manchester Street. He then directed the Commission's attention to the overhead projector, and explained that the private sewer system shown on the schematic demonstrates the layout of the private sewer system; and how it will serve this area and these properties. He said that the staff is aware that the system is under construction; however, since the Division of Water Quality has jurisdiction over the layout of this system, the staff is unaware of its status. Mr. Martin said that the Land Subdivision Regulations require public sewer systems to be provided; and as with the past request, this property would be better served through a private sanitary sewer system. He then said that the staff is recommending approval of the waiver, for the following reasons:

1. Granting the waiver(s) is consistent with Article 1-5(c) of the Land Subdivision Regulations that encourage infill and redevelopment facilitation.
2. Not granting the waiver(s) constitutes a hardship for the applicant due to the significant site constraints, including the FEMA floodplain, the elevation and location of the public sewer line and the configuration of the built environment.
3. Granting the waiver(s) will not adversely affect public health and safety, as the required sanitary sewer will be constructed prior to occupancy; and the public street improvements will be constructed in conjunction with the rest of the street improvements, as required by the approved development plan. Approval of that construction will require that this new construction be privately maintained.

Mr. Martin noted that this recommendation is made subject to the following requirements:

- a. Denote: No Zoning Compliance Permit and no Certificate of Occupancy shall be issued for Lots 1, 2, 3 or 4 until sanitary sewer service is provided to the site, meeting the requirements of the Kentucky State Plumbing Code and accepted by the Division of Engineering and the Division of Water Quality.

Representation – Justin Drury, 2020 Land Surveying, was present, representing the applicant. He said that they have submitted the proper documentation on the status of the private sewer to the Division of Water Quality and added that there are governing notes on the final record plat, stating that before any Certificate of Occupancy permits are allowed, the sanitary sewer service must be provided to these lots. He added that the private sewer system must meet the requirements of the Kentucky State Plumbing Code, as well as be accepted by the Division of Engineering and the Division of Water Quality. He said that each of these buildings is being done in phases, and each request has a waiver request associated with the sanitary sewer system.

In conclusion, Mr. Drury said that they are in agreement with the staff's recommendations and requested approval.

Staff Comment – Mr. Martin said that the notes on the final record plat will need to be revised to include this specific request, which will address the concerns over the availability of the sewer and the appropriate timing of that sewer system.

Commission Questions – Ms. Plumlee asked if the sewer would be dedicated to the City after the trail is completed. Mr. Martin replied negatively, and said that the City has made it clear that they do not want any part of this developments sewer system. Mr. Drury said that the final record plat states that the sewer would be maintained as a private sanitary sewer system.

Mr. Cravens asked how this request is different from the previous discussions on PLAN 2014-49F: PINEHURST SUBDIVISION, LOT 33 (AMD). Mr. Martin said that the Planning Commission already granted a waiver on the previous plat for this development; whereas, the representative for PLAN 2014-49F: PINEHURST SUBDIVISION, LOT 33 (AMD) did not submit a waiver request for that property.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request. There was no response.

Action - A motion was made by Ms. Mundy, seconded by Ms. Plumlee and carried 9-0 (Penn and Smith absent) to approve PLAN 2014-50F: DISTILLERY, LLC PROPERTIES (AMD), subject to conditions #1 through #12, changing condition #13 to read: "Denote: No Zoning Compliance Permit and no Certificate of Occupancy shall be issued for Lots 1, 2, 3 or 4 until sanitary sewer service is provided to the site, meeting the requirements of the Kentucky State Plumbing Code and accepted by the Division of Engineering and the Division of Water Quality."

Action - A motion was made by Ms. Mundy, seconded by Mr. Cravens and carried 9-0 (Penn and Smith absent) to approve the findings for the waiver request for PLAN 2014-50F: DISTILLERY, LLC PROPERTIES (AMD), as presented by the staff.

VI. COMMISSION ITEMS

- A. APPOINTMENT OF FLOODPLAIN APPEALS COMMITTEE MEMBERSHIP - The Chair announced that the staff was requesting that the Commission take action to formally reappoint members to the Floodplain Appeals Committee. He said that the current membership included David Holmes, Commissioner of Public Works; Fred Eastridge; Doug Myneer; Bill Hodges and himself. He then said that the staff recommends the reappointment of Fred Eastridge and Doug Myneer, and said that Mr. Smith has volunteered to take his (Mr. Owens) seat on this Committee.

Action - A motion was made by Mr. Brewer, seconded by Ms. Plumlee and carried 9-0 (Penn and Smith absent) to reappoint Fred Eastridge and Doug Myneer, and newly appoint Joseph Smith (replacing Mike Owens).

- B. PFR 2014-5: LFUCG COMPRESSED NATURAL GAS FUELING FACILITY - a Public Facility Review for a compressed natural gas fueling facility for Lexington-Fayette Urban County Government vehicles at 675 (aka 669) Byrd Thurman Drive.

SUMMARY FINDINGS: There are no Goals or Objectives of the Comprehensive Plan that are in opposition to the installation of a CNG fueling facility on the LFUCG Division of Waste Management/Fleet Services property. It is supported by the 2013 *Comprehensive Plan's* Mission Statement, as well as text, goals and objectives. Although the 2013 Plan has no generalized land use map with individual property recommendations, the proposal is in compliance with the Land Use Element of the 2007 Plan (which recommended **Other Public Uses** for the property, based on the fact that the property has been owned and operated by the Urban County Government for several years). It is in also in compliance with the Zoning Ordinance, which now permits a CNG fueling facility as a principal use in an I-1 zone. Additionally, there is a high level of support for the project in *Destination 2040*, which was written as the community's vision, with recommendations as to how to achieve that vision.

Although there is a FEMA flood hazard area on the property, the fueling facility will be at least 340 feet from the floodplain; and being at least 460 feet from the nearest property line, there is little to no likelihood that there will be any disturbance to adjoining property owners. Fleet Services already has a conventional fueling facility on the property, and the proposed CNG facility will be installed and maintained by a nationally known and leading provider of compressed natural gas.

According to Clean Energy and the EPA, natural gas is domestically sourced, and it is estimated that there will be a plentiful supply for at least the next 120 years. Because it is supplied in this country and is a clean-burning fuel, causing little to no greenhouse gas emissions, it will contribute to air quality attainment and environmental protection, both of which are endorsed by the Comprehensive Plan.

Staff Presentation - Ms. Rackers presented the staff report for this Public Facility Review for a compressed natural gas fueling facility for Lexington-Fayette Urban County Government vehicles at 675 (aka 669) Byrd Thurman Drive. She directed the Commission's attention to the aerial photograph, and explained that the property is 46.01 acres and is located at just off Old Frankfort Pike. She said that the property is located within a Light Industrial (I-1) zone, which does allow a compressed natural gas fueling station as a principal use. She then said that, with the exception of one property to the north, the immediate surrounding properties are also zoned Light Industrial. She added that Town Branch Creek runs along the northern portion of the property and there is a large floodplain area that is associated with the creek.

Ms. Rackers said the property has had a long-standing ownership by the Urban County Government as the offices of Fleet Services and Waste Management. She then said that Fleet Services already has a conventional fueling facility on the property, as well as a maintenance facility for the LFUCG vehicles, including the Solid Waste vehicles.

Ms. Rackers said that the 2013 Comprehensive Plan has no land use map with individual property recommendations, unlike past plans, but the land use map for the 2007 Comprehensive Plan recommended Other Public Uses for the property, a land use category that includes large facilities that benefit the public, such as government offices. She then said that this request is supported by the 2013 Comprehensive Plan's Mission Statement, as well as text, goals and objectives. It is also supported by the *Destination 2040*. She further said that the Mission Statement states that the Comprehensive Plan "seeks to provide flexible planning guidance to ensure that development of our community's resources and infrastructure preserves our quality of life, and fosters regional planning and economic development. This will be accomplished while protecting the environment; promoting successful, accessible neighborhoods; and preserving the unique Bluegrass landscape that has made Lexington-Fayette County the Horse Capital of the World." She said that there are no Comprehensive Plan goals, objectives or text found to be in opposition to this proposal, and the text in Chapter 4 does provide a great deal of support for this project. She then said that *Destination 2040* provides support for the fueling facility in its discussion on Sustainability, in its "Human Needs Action Approach" (Essential Resources section), and in its "Areas of Opportunity." With regard to "Sustainability," it states:

* - Denotes date by which Commission must either approve or disapprove request.

"We will lead in sustainability through our use of practical, environment-friendly practices and emerging technologies to bring about a safer, more resilient community. We value initiatives that improve energy efficiency through reduced energy consumption and develop responsible energy sources for transportation and built infrastructure; increase the available supply of locally-produced food and energy; sustain quality and self-sufficiency in our water supply, and build the community's capacity to be adaptable and flexible in response to future change." *Destination 2040's* Action Approach 4-D states: "Make Lexington a leader in improving air quality by reducing greenhouse gases and employing sustainable choices in housing, transportation, energy and other community activities. As part of this approach, ensure that LFUCG, LexTran and other public sector entities continue to invest in energy efficient vehicles." She noted that Lexington-Fayette Urban County Government and LexTran are listed as primary initiators of this Action Approach.

Ms. Rackers said that in the Areas of Opportunity the Plan states: "In response to the current uncertainty and higher price of petroleum-based energy sources, we are seeing some changes in travel patterns ... less driving, more carpooling, increased ridership for LexTran and increased interest in expanding public transit. Alternative fuels, electric-powered cars and mass transit, solar and wind energy, and the shifting of funds that were previously unavailable to the research, development and implementation of these new technologies are changing the way we will move about in the future. The grip of the petroleum-based transportation system will be loosened by consumer pressure to innovate, new transportation alternatives will rise, and if they are good, they will thrive." She then said that the LFUCG is taking the lead by providing new fleet (solid waste) vehicles that will utilize the compressed natural gas.

Ms. Rackers said that, in order to facilitate this type of request, it was determined a couple of years ago that a text amendment to the Zoning Ordinance should be pursued to allow CNG fueling facilities in Fayette County. The text amendment was initiated by the Council; and after review and a recommendation by the Planning Commission, it was approved by Council in January of 2013 (Ordinance #5-2013). She said that these types of facilities, in general, are now permitted as a principal use in the B-3, B-4, I-1, I-2 and B-5P zones and a conditional use in the B-1, B-2, B-2A, B-6P and the P-2 zones. Directing the Commission's attention to one exhibit (the Clean Cities schematic), she explained that a typical CNG Fast Fill station has above-ground tanks for the storage of the natural gas; an inlet gas dryer, which removes the vapor (moisture) from the gas; a compressor system, which compresses the natural gas to a desired PSI (pounds per square inch); and the gas dispensers, which are similar in appearance to fuel pumps at a typical gas/service station. She then directed the Commission's attention to the aerial view of the site and the site plan, and said that the CNG fueling facility will be located near the rear of the property in an area near where the solid waste trucks are kept when not in use. She added that there are sensors located throughout the compressor to detect any leak; and, in the rare event that a leak does occur, the natural gas will dissipate, resulting in little to no chance that the floodplain, along the northern property line, could or would be affected by the fueling facility. She added that even though CNG is a flammable gas, it has a narrow flammability range, which makes it inherently safer than petroleum-based fuels.

Ms. Rackers said that Clean Energy was chosen as the provider, as well as the contractor for the design; construction/set-up; operation and maintenance/repair of the facility because they are a national leader in this field. She added that there are several reasons why natural compressed gas is a desirable alternative fuel source. It is less costly; it is safer on the environment than petroleum-based fuels; and it results in lower maintenance cost for vehicles because of its greater efficiency. Natural Compressed Gas is endorsed by the Environmental Protection Agency. It is domestically sourced, and it has been estimated that there will be a plentiful supply – enough to last for at least the next 120 years, resulting in a significant reduction in the nation's dependence on foreign oil. She said that to reduce the country's dependence on foreign oil, in and of itself, supports what is contained in *Destination 2040* with regard to sustainability, and in the Comprehensive Plan with regard to protecting the environment.

In conclusion, Ms. Rackers said that the 2013 Comprehensive Plan's Mission Statement and the text, Goals and Objective are in support of this request, as well as the Land Use Element of the 2007 Comprehensive Plan, which recommended Other Public Uses for the property. She then said that the CNG fueling facility is in compliance with the Zoning Ordinance, as this use is allowed as a principal use in an I-1 zone. Additionally, *Destination 2040* also supports this request.

Ms. Rackers noted that the following changes should be made on the staff report under the Summary Finding:

Although there is a FEMA flood hazard area on the property, the fueling facility will be at least 340 feet from the floodplain; and being at least 460 feet from the nearest property not used for industrial purposes, there is little to no likelihood that there will be any disturbance to adjoining property owners. Fleet Services already has a conventional fueling facility on the property, and the proposed CNG facility will be installed and maintained.....

Ms. Rackers said that Troy Paionk, Clean Energy, was present should the Commission have any questions or concerns.

Commission Questions – Ms. Plumlee asked if this facility will only be used by the City or if LexTran will convert to compressed natural gas and use the facility as well. Ms. Rackers said that it is the staff's understanding that this facility will only be used by the City. She then said that LexTran will likely have their own CNG when the new facility is completed.

The Chair asked if Mr. Paionk had anything else to add. Mr. Paionk responded negatively. The Chair said that, according to the staff report, the refueling will be on Mondays, Tuesdays, Thursdays and Fridays, and asked why not on Wednesdays. Ms.

Rackers said that that is how Fleet Services noted the refueling schedule in the RFP. Mr. Paionk added that there is no garage collection locally on Wednesday.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request. There was no response.

Action - A motion was made by Ms. Mundy, seconded by Mr. Cravens and carried 9-0 (Penn and Smith absent) to find PFR 2014-5: LFUCG Compressed Natural Gas Fueling Facility in compliance with the 2013 Comprehensive Plan.

VII. STAFF ITEMS

- A. PUBLIC HEARING FOR MARC 2014-1: BOONE CREEK PROPERTIES, LLC – The staff has received a request by this applicant, dated August 4th, to reactivate this application, which had been indefinitely postponed earlier this year. They have asked that the requisite public hearing on this zone change and Conditional Use Permit be held on Thursday, August 28. However, there are already a number of items on that agenda. The staff would ask the Commission whether they wish to schedule this hearing on this date, or on another date next month.

Staff Comments – Mr. Sallee said that Richard Murphy had submitted a letter on August 4, 2014, requesting that MARC 2014-1: Boone Creek Properties, LLC (d/b/a Boone Creek Outdoors), the zone change request and conditional use permit, be reactivated. He then said that the reason the staff is referring this item to the Planning Commission is that Mr. Murphy requested that this item be placed on the August 28th meeting agenda. In reviewing the 2014 Meeting and Filing Schedule, items that were submitted on August 4th would ordinarily be docketed for the September 25th Planning Commission meeting. He said that the applicant had submitted notice letters to the staff, indicating that this item would be heard at the August 28th meeting; and under the advice of the LFUCG Department of Law, those letters were mailed to the listed property owners. Mr. Sallee said that the Planning Commission does have the ability to schedule this item for the August 28th meeting; but it is the staff's opinion that the Planning Commission does have discretion as to when this would be heard.

Commission Questions – Mr. Wilson asked, since this involves a reactivation, if this request would be required to follow the same process as a new filing and be reviewed by the Subdivision and Zoning Committees. Mr. Sallee indicated that this item could be reviewed by both Committees; but since there is not a new development plan and the zoning request has not been amended, there is nothing that would require it to be reviewed again. He said that to have an application indefinitely postponed and then reactivated is an unusual circumstance; and the staff only knows of one other time this situation has occurred, which was in 1998. However, in that situation, the applicant did amend their application, which required it to go through the entire cycle again. He said that these are rare events.

The Chair asked what the staff would prefer. Mr. Sallee said that the staff has no preference, and they would be prepared to go forward with this request at whichever meeting the Commission chooses.

Mr. Berkley asked how many items are on the August 28th docket. Mr. Sallee said that the Commission's agenda currently includes four zone changes and one text amendment. He then said that the Council also has a scheduled meeting that night at 6:00 PM; so if there are cases that are not heard by the Commission, the remaining cases would need to be postponed one month or the Commission would need to move the meeting to another location, such as the Phoenix Building. The Chair reminded the Commission members that PLAN 2014-49F was also postponed earlier to this (August 28th) meeting.

The Chair asked the staff's thoughts about placing this item on the September 25th docket. Mr. Sallee said that, unless an item is postponed from the August 28th meeting, the September 25th agenda would have one zone change and two text amendments listed.

Audience Comment – The Chair said that this portion of the meeting is regarding the reactivation of MARC 2014-1, and to determine when this item would be heard by the Commission. He asked if anyone in the audience wished to discuss this request.

Mr. Richard Murphy, attorney, was present, representing the applicant. He said that when they recently received the Court's ruling, they did not believe they would be required to go through the same procedures as before, due to the nature of the judge's order. He then said that they do understand the need for new notice letters and they did file the reactivation letter at the staff's request. He added that the letter was submitted in plenty of time to meet all legal notice requirements for the August 28th hearing date. This is not a new application; it is an existing application, and no amendments have been made.

Mr. Murphy said that they hope the Commission understands that speed is important. He then said that this is an outdoor activity; with this item being heard on August 28th, and should the Commission approve the request, there would be still be time to have this facility open this year. He added that, considering that this case should have been heard in February, and six months have passed, they believe they are being reasonable in requesting this item to be heard on August 28th. He said that an agenda is set by the order of each case and when they were filed; and should this item be placed on the August 28th docket, they would be the first case to be heard. He then said that they understand that the Commission sets the agenda; but, at the same time, they hope the Commission understands why they would like for this item to be heard as soon as possible. In conclusion, Mr. Murphy said that they are requesting for this item to be placed on the August 28th docket, but the Commission also has the option for this item to be placed on the September 11th docket, as well.

Mr. Don Todd, attorney, was present representing the Boone Creek and Old Richmond Road Neighborhood Associations. He said that this case will take a considerable amount of time, and his clients want the chance to be heard. He then said that, given the lengthy discussions at the Board of Adjustment hearing, if this item were to be placed on the August 28th meeting, there would be time restrictions on the presentations. This would be unfair to the neighborhoods involved. He said that this case deserves to be heard on its merits, and it deserves to be heard in full and not in an abbreviated fashion.

Mr. Todd said that Mr. Murphy had indicated that speed is important to his client; but considering his client's past activities, they had created this issue. He then said that had Mr. Murphy's client followed the acceptable procedures, by applying for the zone change and the conditional use permit before they started the construction on the facility, it would have been over with by now. He added that they do not believe Mr. Murphy's client should benefit from the creation of his own problem. More importantly, should the Commission consider this case, the pending Ordinance will not be in place that deals with this type of activity in the Agricultural Natural (A-N) zone. He indicated that the Commission would be "flying blind" if they were to take action on this item before any conditions were to be set in place for the A-N zone. He said that should the Commission place this item on the August 28th docket, it would be unfair. He then said that, by placing it on the September 25th docket, it would give everyone time to consider all of the elements and allow people the chance to be heard. Mr. Todd asked that the Commission review the zoning development plan because they are not showing the location of the existing zip line improvements. The Chair asked for Mr. Todd to speak to the reactivation, not to the zoning development plan. Mr. Todd asked for the Commission to take more time to review this case and allow it to go back through the process.

Action - A motion was made by Mr. Wilson, seconded by Ms. Plumlee to schedule this hearing for September 25th.

Discussion of Motion – Mr. Cravens said that the Commission already decided not to hear this case in February. Now the Courts are ordering the Commission to hear this case, so he sees no reason to delay this item any further. He then said that the applicant had filed the notice letters in a timely manner, so he believes this case should be heard on August 28th.

Mr. Drake asked if there is a question of justice, and if the Commission abused the applicant's rights by refusing to hear this case in February. He said that the Court seems to have made that conclusion; and if that is the case, if the Commission has an obligation to expedite this case as quickly as they can.

The Chair said that the Commission is obligated to hear this case in a correct and proper manner, and it is up to the Commission to determine what the correct and proper manner is. He then said that with there being two new Commission members that have not reviewed this case, everyone would benefit from reviewing it again, since it has been 6 months, then proceeding forward. As far as expediting this case, it is within the Ordinance; but hearing it in two weeks might be a constraint on people who want to hear this case. He said that it would be his preference to place this case on the September 25th docket.

The Chair called for the vote. The motion carried 5-4 (Cravens, Mundy, Drake, and Richardson opposed; Penn and Smith absent).

Legal Counsel Comment – Ms. Jones said that the motion did not address whether or not the Commission was requesting that this item go back through the Subdivision and Zoning Committees. Mr. Wilson said that that was not included in his motion, because it is not required to go back through the Committee process. He then said that, unless there is some protocol that the Commission is breaching, he was considering the staff's advice by placing this item on the September 25th docket. Mr. Wilson said again that his motion did not include this item going back through the Subdivision and Zoning Committees. Mr. Sallee said that, just for clarification, the staff lists postponed items at the bottom of the Subdivision Committee agenda and at the top of the Zoning Committee agenda. The Chair asked what Mr. Wilson would like to do, to which Mr. Wilson responded that he did not care. Mr. Plumlee requested that this item be reviewed by the Committees, since it has been awhile. The Chair asked if the Commission should take action on this request. Ms. Jones said that it would be best in this case. Mr. Murphy said that they will not be presenting any new information to the Commission, and they were not planning for this case to be reviewed by the Committees again.

Action - A motion was made by Ms. Plumlee to review this plan at Subdivision Committee meeting, just as a refresher.

The motion was seconded by Mr. Wilson.

Discussion of Motion – Mr. Cravens said that he sees no reason for this item to be placed on the Committee agendas. He then said that it does not matter what the Committee outcome would be, because it would still be heard at the September 25th meeting. The Chair said that since 6 months had passed, it would be beneficial to review this application again.

The motion failed 3-6 (Cravens, Brewer, Mundy, Berkley, Drake, Richardson opposed; Penn and Smith absent).

- B. WORK SESSION** – The Chair reminded the Commission of the upcoming Work Session on August 21, 2014, and said that there would be a presentation on horse country tours, as well as a continued discussion on the recreational text amendment.

VIII. AUDIENCE ITEMS – No such items were presented.

IX. NEXT MEETING DATES

* - Denotes date by which Commission must either approve or disapprove request.

Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (Phoenix Building)	August 27, 2014
Zoning Items Public Hearing , Thursday, 1:30 p.m., 2 nd Floor Council Chambers	August 28, 2014
Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (Phoenix Building)	September 4, 2014
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (Phoenix Building).....	September 4, 2014
Subdivision Items Public Meeting , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	September 11, 2014

IX. **ADJOURNMENT** - There being no further business, the Chair adjourned the meeting at 2:45 PM.

Mike Owens, Chair

Will Berkley, Secretary